COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 217 of 2002

The New India Assurance Co. Ltd. … **Appellant.**

Versus

Smt. Noorjahan and another … **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Admit.

This appeal has been preferred under Section 30 of the Workmen's Compensation Act, 1923 ***(in short the Act)*** against the judgment and Award, dated 24-7-2002, passed in Case No. W.C.A. 23 of 1998, Smt. Noor Jahan Vs. Sri Mahmood Alam and another, by the Workmen's Compensation Commissioner & Asstt. Labour Commissioner Kumaun Region, Haldwani ***(hereinafter referred to as the Commissioner)***, whereby the learned Commissioner has awarded a sum of Rs. 2,26,380/- along with 12% per annum simple interest, i.e. Rs. 81,495/- (total Rs. 3,07,875/-) in favour of the claimant-respondent no. 1 with certain directions, as against the Opposite Party No. 2-appellant. Aggrieved, the Insurance Company-appellant has come up in appeal and framed the substantial question of law in memo of appeal that the death was direct result of the accident was not proved and there was breach of the Insurance Policy by the O.P.No.1 and with a prayer to set aside the impugned judgment and award and has assailed the impugned judgment and award contending that the same is not based on evidence on record,

Brief facts of the case are that claimant Noor Jahan wife of Mahboob Ismail and others filed petition under the Act before the learned Commissioner alleging threin that her huband (

the deceased) was employed under the employment of O.P. No.1 and during the course of his employment, on 18.2.1998 at about 8 a.m., an accident took place, while the deceased was engaged in his work on the machine used for leveling the ground, with the result the deceased sustained injuries and he was rushed to S.S.Jina Base Hospital, Haldwani and ultimately, he was referred to Bareilly Hospital. While the deceased was being taken to Bareilly, he succumbed to his injuries in the way near Lalkuan. The deceased was aged 18 years and he was earning Rs. 2200/- p.m. Claimants have claimed compensation under the Act worth Rs. 2,26,380/- along with interest @ 12% per annum.

The opposite party no.1, the employer, has filed his written statement and has admitted the allegations made in the petition, but has disputed the age of the deceased to be 20 years. It has been stated that the injured Mahboob Ismail was rushed to the hospital and financial assistance was extended to the legal heirs of the deceased. The alleged machine was duly insured with the Insurance Company at the time of accident, therefore the Insurance Company is liable to pay the compensation.

The O.P. No.2-appellant has also contested the claim petition by filing its written statement. It has been asserted that the allegations are denied for want of knowledge. In additional pleas, it has been stated that the Insurance Company was not informed, therefore, the company is not liable to pay any compensation.

Before the learned Commissioner, the claimants have examined Mohd. Ibrahim, the father of the deceased, who has stated on oath that the deceased was aged 18 years and he was employed under the employment of O.P. No.1 and was required to operate the leveling machine. The deceased sustained injuries while operating the machine and was rushed to Base Hospital. He was referred to Bareilly, but in the way his son died as a result of injuries sustained by him. This witness has also proved discharge

slip of the hospital, Ext. Ka-1 and death certificate, Ext. Ka-2. He has also proved the notice sent to the Insurance Company and the employer as Ext. Ka-3. O.P. No.1 has examined himself on oath and stated that on the fateful day at about 8 a.m., his helper (the deceased) sustained injuries during the course of his employment and he sustained grievous injuries, who ultimately died. Information was given to the Insurance Company, vide Ext. D-1. He has admitted that the deceased was getting Rs. 2000/- per month as salary in addition to over-time allowance.

After hearing both the parties and considering the entire material on record, the learned Commissioner came to the conclusion that the age of the deceased was 18 years and he has died on account of injuries received by him during the course of his employment. The learned Commissioner has accordingly determined the amount of compensation as mentioned earlier against the Insurance Company.

We have heard learned counsel for the appellant, Mr. Tanveer Alam Khan, as well as learned counsel for the claimant-respondents, Mr. Z.U. Siddiqui, and have carefully gone through the entire material on record including the impugned judgment and award.

It has argued on behalf of the appellant that no driving licence has been produced on record, therefore, the claim is not maintainable. This contention of the appellant is without force, firstly, because this plea has not been taken by the appellant in its written statement, nor it has been pleaded that the deceased was a driver. Secondly, it was for the appellant-insurance company to prove by cogent evidence the pleas raised by its. Thirdly, the appellant has not examined any witness in support of its contention and fourthly, because the learned Commissioner has already considered this matter in its judgment. Lastly, the claimants have not stated anywhere that the deceased was employed as driver and

the deceased has been stated to be operator and the insurance policy has been issued in respect of operator/ helper both, therefore, the argument on this score has no merit. In our opinion, there has been no breach of policy conditions in the present case.

It has been also argued before us that the factum of death of the deceased should have been supported by any Panchayatnama or Post Mortem Report, but in the present case either of the documents have not been filed, therefore, the finding on the point of death is not wrong. This contention of the learned counsel is totally misconceived. It is not disputed that the deceased was admitted in the Base Hospital Haldwani. Subsequently, the injured Mahboob Ismail was referred to Bareilly. According to the claimants, he died as a result of injuries in the way near Lalkuan. Had the deceased died in the hospital on account of injuries sustained by him, then the matter would have been reported to the police and inquest report would have been prepared and the post mortem of the dead body would have been done. It is a thing of common knowledge that generally the family members of the deceased do not prefer conducting of Post Mortem of the dead body even when a death takes place in the hospital. In the present case, deceased had died in the way, therefore, even if there is no Panchnama or Post Mortem Report, it cannot be presumed that deceased had died otherwise than the case of the claimants. Moreover, it was for the Insurance Company to lead evidence to show that the deceased had not died as a result of accidental injuries. It is admitted that the deceased is not alive. Photocopy of death certificate (Ext. Ka-2) is on record. The veracity of this document has also not been challenged by the Insurance Company at any stage of trial. There is nothing on record to substantiate the contention of the appellant.

No other point was urged or argued before us.

In the result, the appeal fails on merit and is liable to be dismissed. The judgment and award, under appeal, is upheld. No order as to costs.

The amount in deposit with this Court shall be remitted to the Commissioner concerned. The claimant-respondents shall be at liberty to withdraw the amount.

24-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP